

1 Honorable Benjamin H. Settle  
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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 CLYDE RAY SPENCER, MATTHEW RAY )  
12 SPENCER, and KATHRYN E. TETZ, )  
13 ) No. 11-5424 BHS  
14 Plaintiffs, )  
15 ) STIPULATION TO EXTEND TIME  
16 ) LIMIT FOR SERVICE OF  
17 ) DEFENDANTS CLARK COUNTY,  
18 ) SHARON KRAUSE, AND MICHAEL  
19 ) DAVIDSON  
20 ) Note for: October 27, 2011  
21 FORMER DEPUTY PROSECUTING )  
22 ATTORNEY FOR CLARK COUNTY JAMES )  
23 M. PETERS, DETECTIVE SHARON KRAUSE,)  
24 SERGEANT MICHAEL DAVIDSON, CLARK )  
25 COUNTY PROSECUTOR'S OFFICE, CLARK )  
26 COUNTY SHERIFF'S OFFICE, THE COUNTY )  
27 OF CLARK, SHIRLEY SPENCER and JOHN )  
DOES ONE THROUGH TEN, )  
Defendants. )

28 Pursuant to Fed. R. Civ. P. 4(m), the parties stipulate and request that the Court extend  
29 the time for Plaintiffs Clyde Ray Spencer, Matthew Ray Spencer, and Kathryn E. Tetz to serve  
30 Defendants Clark County, Sharon Krause and Michael Davidson to November 15, 2011.

31 Under Rule 4(m) the Court "must extend time for service upon a showing of good  
32 cause," and "may extend time for service upon a showing of excusable neglect." *Lemoge v.*  
33 *United States*, 587 F.3d 1188, 1198 (9th Cir. 2009). "Good cause to avoid dismissal may be  
34 demonstrated by establishing, at minimum, excusable neglect." In addition the following

35 STIPULATION FOR EXTENSION OF TIME – 1  
36 Case No. 3:11-cv-05424  
37 DWT 18409378v1 0094078-000001

38 Davis Wright Tremaine LLP  
39 LAW OFFICES  
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1 factors support a finding of good cause: "(a) the party to be served personally received actual  
2 notice of the lawsuit; (b) the defendant would suffer no prejudice; and (c) plaintiff would be  
3 severely prejudiced if his complaint were dismissed." *Id.* at 1198 n. 3.

4 In serving Defendant Clark County, Plaintiffs inadvertently served Clark County via the  
5 Clark County Clerk instead of the Clark County Auditor. Plaintiffs will promptly serve Clark  
6 County via the Clark County Auditor upon issuance of a corrected summons.

7 Plaintiffs were delayed in serving Defendants Sharon Krause and Michael Davidson due  
8 to incorrect residence information, and multiple failed attempts at service. Defendant Krause  
9 was personally served at her residence in Fort Mohave, Arizona on October 6, 2011, six days  
10 after the 120-day time limit for service. Defendant Davidson was personally served at his  
11 residence in Bend, Oregon on October 22, 2011.

12 Defendants Clark County, Sharon Krause and Michael Davidson have actual notice of  
13 the lawsuit.

14 Defendants Clark County, Krause and Davidson have suffered no prejudice due to the  
15 delay in service.

16 The parties will be prejudiced by the alternative to an extension of time – dismissal of  
17 the complaint without prejudice – because dismissal will require the Plaintiffs to re-file the  
18 Complaint, needlessly delaying adjudication of the case.

19 For the foregoing reasons, the parties request that pursuant to Rule 4(m), this Court  
20 extend the time limit for service to November 15, 2011.

21 DATED this 27<sup>th</sup> day of October, 2011.

22 Respectfully submitted,

23 Attorneys for Plaintiffs

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## CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2011, I electronically filed foregoing with the Clerk of the Court using the CM/ECF system which will send notification of said filing to the following:

**Daniel J. Judge, of Attorneys for Defendant James M. Peters**  
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The following will not receive electronic notification of the filing:

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I certify that on October 27, 2011, I caused a true and correct copy of the foregoing to be mailed to Robert McKenna at the above address.

DATED this 27<sup>th</sup> day of October, 2011.

s/ Daniel T. Davies  
Daniel T. Davies